IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1718 of 1983 to
FIRST APPEAL NO.1726 of 1983 with
FIRST APPEAL NO.686 of 1983

Date of decision: 19-6-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SUBHADRA BABULAL MEHTA

Appearance:

F.A.1718 TO 1726 of 1983

MR S.K. Desai for Appellant

MR SV RAJU for Respondent No. 5

Mr. R.H. Mehta for respondents No. 1

None present for other respondents.

F.A.No.686 of 1983

Mr. R. H. Mehta for the appellant.
Mr. S.K.Desai for Resp.No.4
None present for other respondents.

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 19/06/98

ORAL JUDGEMENT

All these first appeals arise out of one and the same vehicular accident, and as such they are taken up together for hearing and are being disposed of by this common judgment and order.

2. As a result of head on collision of two vehicles one S.T.Bus bearing registration No.GRS 6866 and truck bearing registration No.RSB 3862, 26 passengers travelling in the bus and 3 persons travelling in the truck sustained injury. The driver of the bus had also sustained injury and he has filed claim application. So in all there were 30 claim petitions before the Motor Accidents Claims Tribunal arising out of this accident, which came to be decided vide award of the Motor Accidents Claims Tribunal, Sabarkantha at Himatnagar, dated 30th September, 1982. Out of these 30 claim applications, these ten appeals are before this court. In these matters the Tribunal has awarded compensation as under:

F.A.No.	M.A.C.P.No.	Compensation awarded Rs.
1718/83	352/81	10,752/-
1719/83	127/81	12,200/-
1720/83	48/81	26,550/-
1721/83	208/81	26,700/-
1722/83	247/80	9,999/-
1723/83	204/81	40,000/-
1724/83	347/80	25,000/-
1725/83	363/80	21,200/-
1726/83	126/81	21,440/-
686/83	352/80	10,752/-

The claimants were also given interest at the rate of 6% from the date of the accident. The appellant - Gujarat State Road Transport Corporation has filed nine matters and one appeal is arising from the award in claim petition which has been filed by the driver of the bus.

3. Learned counsel for the Corporation contended that it was head on collision between two vehicles and the driver of the bus was equally rash and negligent in causing the accident and as such the Tribunal has committed serious error in altogether absolving the driver of the truck from any negligence. In fact it was head on collision and as such negligence of the bus driver should have been taken as 50%. So the award of the Tribunal to the extent where it has made the driver of the bus to be 100% negligent is arbitrary. Learned counsel for the appellant in FA No.686 of 1983 (driver of the bus) supported the contention raised by the counsel for the Corporation. In addition he further contended that the Tribunal has committed serious error in not awarding compensation to the bus driver more than to the extent what he would have been entitled for the injuries sustained by him in the accident under the Workmen's Compensation Act. Carrying this contention further learned counsel for the driver of the bus contended that because of the mechanical defect in bus and because of not giving sufficient rest to the driver, the S.T.Corporation should have been made liable to pay the total amount of compensation claimed by the claimant.

4. I have given my thoughtful consideration to the submission made by the learned counsel for the parties.

The only question which calls for the consideration of this court in the appeal of the Corporation is whether the judgment of the Tribunal to the extent it has found the driver of the bus of the Corporation to be 100% responsible for the accident is correct or not. The contention of the learned counsel for the Corporation is that from the panchnama report it is born out that the truck could not stop for long distance of 65 feet and therefore rash and negligent driving should have been inferred in relation to the driver of the truck. The Tribunal has considered the evidence of the claimants and the driver of the Corporation bus. It has also considered the panchnamas. Before discussing the evidence I consider it proper to caution here that the driver of the Corporation himself has admitted in the appeal that the bus involved in the accident was not mechanically perfect. He has come up with the case that the bus was not mechanically fit. Secondly he has come up with the case that sufficient rest was not given to the driver. He had returned from duty at about 12.00 mid night on 29-6-1980 and on the next day i.e. 30-6-80 at 4.00 a.m. he was again given charge of the bus which was involved in this accident.

He left Ahmedabad at about 4.00 a.m. on 30-6-1980. From these facts which have been admitted by none other than the driver of the Corporation two things are clearly borne out - firstly that the vehicle was mechanically defective and secondly on that day the driver of the vehicle had hardly 3 hours' rest. These factors have to be kept in mind while dealing with the contentions of the learned counsel for the Corporation.

5. From the evidence of the driver of the Corporation's vehicle, it is apparent that his bus was dragging on one side for fairly long distance. The bus had come down upon southern side of the road, might be forced by the dragging, before the driver actually applied break. The standing position of the vehicle is also very important to be noticed. It was standing in such a position that it would be very difficult to say that the truck could have been there. It must have been at fairly long distance and the driver of the bus had come down on the southern side much earlier. The tribunal has rightly noticed that the very fact that the driver of the bus had come down up to the southern side and did not stop on the northern side, if at all he was there at earlier point of time to show that he was driving without any control over the vehicle. This finding of the Tribunal fortify the fact that the vehicle of the Corporation was not mechanically fit and secondly under what condition the driver was put on duty. A person who had hardly three hours sleep after doing duty for about 16 hours certainly may be negligent in driving the vehicle on the road and that too in the early morning. The driver of the truck, as rightly observed by the Tribunal, was quite vigilant in applying break from fairly long distance on seeing the danger ahead. Application of break by the driver of the truck from long distance on seeing the danger ahead goes to show that he was alert and vigilant and did what had to be done by him in such a situation. The Tribunal has, in the facts of the case, rightly negatived the contention of the Corporation and its driver that in the case of head on collision presumption of composite negligence should have been made. Reference may have to be made to the statement of Kiran Kantilal Shah who was one of the claimants in the case. He stated that the driver of the bus was driving the bus in full speed on the wrong side. Some other claimants also stated that the bus driver was cautioned on the way to drive slowly, but he did not pay any heed to it. The claimants are unanimous in saying that the accident occurred due to the rash and negligent driving on the part of the driver of the bus. So none of the claimants had tried to find fault with the driver of

the truck. It is also a fact which has come on record that the accident has taken place on the incorrect side of the bus. The panchnama has also been discussed by the Tribunal, and the Tribunal held that there is nothing to indicate in the panchnama that prior in point of time to the distance of 12 feet the bus was being driver on the northern side of the road. The Tribunal also considered the argument which has been advanced by the learned counsel for the Corporation before this Court to relate the rashness and negligence on the part of the truck driver on the ground that he could not stop the truck for long distance of 65 feet. Rightly this contention was not accepted by the Tribunal. The driver of the truck was driving his vehicle on the correct side and he was definitely justified in applying break slowly on take over a longer distance on the assumption that the other vehicle coming from the opposite side, which was not a mini vehicle but a giant vehicle, would definitely go on its correct side in due course of its journey. Every driver of the vehicle coming from other side, except that vehicle which is coming from the front side, will go in its own line of the road. For this the driver of the other side, i.e. driver of the truck in this case, has to take care that he has to slow down his vehicle and provide sufficient space on the road to that on going vehicle. In the present case the driver of the bus had acted negligently and he had come towards the wrong side and as a result thereof the collision of the vehicles had taken place. In these facts and circumstances the learned Tribunal has not committed any illegality in not drawing inference of contributory negligence of the truck driver.

6. I am in full agreement with the judgment of the Tribunal, and in the facts and circumstances of the present case and particularly in the presence of the statement of claimants and the admission of the driver of the bus of the Corporation to the effect that the vehicle of the Corporation was mechanically defective and the driver did not have rest for more than 3 hours on that day, I do not find any merit in the contention raised by the learned counsel for the Corporation, supported by the counsel for the bus driver. No other point has been raised by the counsel for the Corporation.

7. In the result all these appeals of the Corporation fail and the same are dismissed.

8. Now I may take up the other point raised by the learned counsel for the bus driver in First Appeal No.686 of 1983.

9. The driver, being an employee of the Corporation, who sustained injury in the vehicular accident, has two remedies. He could have pursued the remedy under the Workmen's Compensation Act for determination of the compensation to be paid to him for the injury sustained during the course of his employment. Another remedy open to him was to file claim petition before the Motor Accident Claims Tribunal. In this case the driver has chosen to follow the second remedy. The counsel for the appellant in this case contended that the driver being an employee of the Corporation, and having sustained injury in the motor vehicle accident while in the course of his employment, he is entitled to compensation more than what he would have been otherwise entitled under the provisions of the Workmen's Compensation Act. The Tribunal has awarded a sum of Rs.10,752/- to the driver of the bus, against the claim of Rs.80,000/- made by the him. Compensation could have been awarded only on the basis of the disability sustained by the employee during the course of employment, as provided under the Workmen's Compensation Act. Taking into consideration the disablement of the claimant, the Tribunal has rightly awarded Rs.10,752/-, and the claim made by the appellant in this appeal for enhancement of the said amount does not stand any merit.

In the result First Appeal No.686 of 1983 is also dismissed.

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